

CUMULATIVE DIGEST

CH. 25 HOME INVASION

§25

People v. Booker, 2015 IL App (1st) 131872 (No. 1-13-1872, 5/12/15)

Defendant was charged with several offenses including home invasion while armed with a firearm. Following a bench trial, he was convicted of home invasion while armed with a dangerous weapon other than a firearm. In announcing its verdict, the trial court stated that the conflicting evidence failed to establish that the weapon in question was a firearm.

1. The Appellate Court held that defendant was improperly convicted of home invasion while armed with a dangerous weapon other than a firearm. A defendant may not be convicted of an uncharged crime unless it is a lesser-included offense of the charged crime and the evidence at trial rationally supports a conviction for the lesser offense and an acquittal of the greater offense. To determine whether an uncharged crime is a lesser-included offense, the court looks to the allegations in the charging instrument to determine whether the description of the greater offense contains the broad foundation or main outline of the lesser offense.

Noting that the home invasion statute places committing the offense "with a firearm" or "with a dangerous weapon other than a firearm" in different subsections, the court concluded that the former offense necessarily excludes the latter offense. Thus, an allegation that defendant was armed with a dangerous weapon other than a firearm cannot be reasonably inferred from the allegation that he was armed with a firearm.

Because the information charging defendant with home invasion while armed with a firearm did not state the broad foundation or main outline of home invasion while armed with a dangerous weapon other than a firearm, the latter offense was not a lesser-included offense. The trial therefore erred by convicting defendant of the uncharged offense of home invasion with a dangerous weapon other than a firearm.

2. The court reached the issue as plain error under the second-prong of the plain error rule.

The convictions and sentences for home invasion while armed with a dangerous weapon were reversed and the cause remanded for re-sentencing on the remaining convictions.

People v. McNeal, ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2010) (No. 1-08-2264, 9/30/10), superceded by 405 Ill.App.3d 647, 955 N.E.2d 32

An element of home invasion is entry into the dwelling of another when he or she knows or has reason to know that one or more persons is present. This element was satisfied where the offender forcibly entered the dwelling simultaneously with the victim.

(Defendant was represented by Assistant Defender Gilbert Lenz, Chicago.)

[Top](#)